The Kansas Court of Industrial Relations

A MODERN WEAPON

SOMETIMES the labor leaders tell us that the Industrial Court has taken away the only weapon that labor had in its right to strike. We would, of course, have no moral right to take away from labor this weapon unless we gave to labor a modern weapon which works better than the archaic one which he has been using with so little benefit to himself. In the Kansas Court of Industrial Relations we have given to labor, in every honorable controversy, a dependable method which guarantees to him justice without endangering the rights of the public or subjecting him to the disastrous kick of the old blunderbuss which he calls the strike.

—*Henry J. Allen.*

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The Unanswered Question

"When a dispute between capital and labor brings on a strike, affecting the production or distribution of necessaries of life, thus threatening the public peace and impairing the public health, has the public any rights in such a controversy, or is it a private war between capital and labor?"

IN THE Carnegie Hall debate between Governor Henry J. Allen and Samuel Gompers, May 28, 1920, the above question was hurled at the labor leader by Governor Allen. Mr. Gompers did not answer it. He was urged to make reply, and though testily promising to do so, he side-stepped. The question strikes at the heart of the discussion. The press of the country accepted it as the high light of the debate, its dramatic potentiality being intensified by the silent significance of Gompers' refusal to make reply. Tantalized to make an answer by the press comments on the debate, Mr. Gompers wrote a belated reply, which meant in effect what a great railroad baron once said: "Let the public be damned."

The Growth of the Industrial Court Idea.

THE Kansas Industrial Court law created a world-wide interest immediately following its enactment. This intense interest has continued unabated to this day. Inquiries about the law began to pour in from every section of the United States and from many foreign countries. Newspapers and magazines have dispatched their representatives to Kansas to gather data about the new law.

Nebraska began holding a constitutional convention soon after the Kansas law went into force. That state had experienced much the same hardship wrought in Kansas. Public sentiment had been aroused to the dire necessity of doing something to relieve the situation. So the constitutional convention of Nebraska wrote into its proposals an amendment making it mandatory upon the legislature to create an industrial court in that state. This proposition was to be voted upon for ratification or rejection by the people. The American Federation of Labor got busy. It sent word to its Nebraska members to get busy and beat the proposal. Samuel Gompers and other labor agitators, fearing the general adoption of the law and hoping to kill it in the first state seeking to adopt it, sent his mandate to Nebraska. A hot campaign was staged, but after a full discussion of the law the people of Nebraska voted four to one in favor of an industrial court for that state. The next legislature will enact the law enjoined upon them by the people's vote.

The next state to show a vital interest in the subject was Iowa. The interest there was sharpened during the coal strike, because she faced the same crisis last winter as Kansas did. When Senator Cummins sought to pass the Esch-Cummins bill with an anti-strike provision in it, union-labor leaders all went after Cummins. They fought out the question of the right to prohibit strikes when Cummins was renominated. To-day several members of the legislature in Iowa have been elected upon the industrial court platform. Doctor Kime, who was nominated for the Iowa senate, made his fight in an industrial district advocating the Kansas Industrial Court. He won the election. There is no doubt that Iowa will, as Nebraska, write an industrial court bill, because the victory of Cummins and the members of the legislature clearly marks the Iowa sentiment. All the high schools of the state have adopted for debate the question: "Whether the Federal government should adopt legislation embodying the principles of the Kansas labor law for the settlement of disputes in public-service corporations."

Texas, which studied the Kansas law for several months with growing anger at labor, wrote the sort of a law that sprang out of the severe reaction. It isn't well balanced. It takes from labor the right to strike and offers no substitute. No state should take from labor its only weapon without offering something better.

Colorado is sure to pass this law in her forthcoming legislature. The Kansas law was indorsed at a recent meeting of the Colorado Bar Association. Colorado has just finished an expensive example of what the strike costs. For over a month she had military law in Denver. Seven men were killed. Much property was destroyed, and at the end of thirty days 800 strikers came back and asked for their jobs at the old wages. The waste of terror of strikes was endured, with loss of life, and nothing gained. There are at least six members of the Colorado legislature who are preparing industrial court bills to be submitted at the next session. With the backing of the Denver representatives, there is little doubt that they will pass a bill establishing a court.

The state of Washington, still suffering the reaction against the "red" attacks at Seattle, is studying the Kansas measure. The Chamber of Commerce at Seattle asked for 2,500 copies of the law for distribution among its members. Candidates for the legislature in that state, members of Congress and state officers have joined in seeking information about the Kansas law. The Washington Industrial Commission and the State Federation of Labor have each had their attorneys in Kansas studying the principles and operation of the Kansas law. Oregon is doing the same, and the Oregon Federation of Labor sent its attorney to Topeka to make an exhaustive study of the bill, conferring with state officers as to its operation.

Indiana is studying the Kansas law carefully, with a feeling that, while Indiana is a strong industrial state with much industrial voting strength, the law must be passed with the consent of both sides. The attorney of the Miners' Association of Indiana came to Kansas to study the law, and was frank to say that he found many good features in it.

Even before the Kansas court began to function, February 1, Charles G. Wood, of Boston, chairman of the Board of Arbitration and Conciliation of Massachusetts, came to Kansas attracted by the passage of the new law. In years of experience he is the oldest member of any board of arbitration in the United States, and upon his return to his home state he wrote newspaper and magazine articles strongly praising the Kansas law and urging its adoption by Massachusetts.

Sentiment is strong for the law in Oklahoma, evidenced by a large number of letters from legislators, manufacturers, oil men, labor councils and chambers of commerce.

Alabama sends word that the legislature at Montgomery is following the lead of Kansas in this matter and is certain to enact the law. The legislature is now in session, with every prospect for a measure based upon the Kansas law. In addition to the above cases where strong interest has been taken, the following states have furnished their quota of correspondence about the law: Florida, West Virginia, South Carolina and Louisiana.

Members of the legislature in another group of states have indicated their intention of introducing similar bills. In this group are Minnesota, North Carolina, Connecticut, North Dakota and South Dakota. The interest in these states is not confined to legislators, business men and labor circles. The Kansas Industrial Court law has been chosen as the subject for debate by all the high schools of a large number of states.

Some forty or fifty colleges have adopted the question of the industrial court for intercollegiate debates. The leading colleges and universities are included in this list, such as Harvard, Yale, Dartmouth, University of Chicago, University of Cincinnati, University of Ohio, University of Michigan, and Northwestern University, as well as many other well-known colleges and state universities.

Interest in the law has been no less marked in foreign countries. Practically as many inquiries have been received from lands overseas as from the states. Such inquiries come from barristers, magistrates, members of assemblies, government officials, members of parliament, rulers and presidents. Bainbridge Colby, secretary of state, has transmitted requests for copies of the law and other information from embassies and legations everywhere around the globe, in which they say the law has created much interest in their countries.

The governor-general of the Philippines made a study of the law and then recommended its passage to the legislative assembly of the Philippines. He was joined in this recommendation by Joaquin Balmori, president of the Philippine Federation of Labor, and locally called the Gompers of the Philippines. He gave it his unqualified indorsement. He submitted to the bureau of labor a memorandum urging a similar court for the islands. He believes the court will prevent strikes and lockouts and will enable industry to continue as usual pending the adjustment of disputes. Included in the Philippine Federation of Labor are all the large tobacco factories. One hundred other factories are embraced in the federation. A member of the legislature of Porto Rico, Jose Penedo Benitz, has decided to introduce the measure into the legislature of the assembly of Porto Rico.

The German workers' conciliation act for the regulation of all disputes between employers and employed has been drafted in response to the unsettled labor conditions in Germany since the signing of the armistice. Its chief provision declares against the strike and the lockout, making them illegal. Like the Kansas law, its jurisdiction extends only to those industries and occupations in which the strike or the lockout would endanger the health, security or food supply of the population. Like the Kansas law, the board's decisions are final, except that under the Kansas law appeal may be had to the state supreme court. The bill also carries a strong penalty clause, as does the Kansas law.

To give an idea of the world-wide interest in the Kansas Industrial Court law, the action of the International Convention of the Rotary Clubs may be cited. At their last international convention at Atlantic City last summer the Kansas law was discussed by the presiding judge of the Kansas court. The convention, after a discussion, went on record unanimously in support of the law, greeting the vote with rousing cheers, the entire convention rising to its feet.

NOT A BOARD OF ARBITRATION.

In some quarters there seems to be a misapprehension as to the nature of the court. Some of the correspondents refer to it as an arbitration law. The Kansas law provides a court of justice for the adjudication of labor disputes—not a board of arbitration. The question most frequently asked

is why the court did not contain in its personnel a representative of labor. For the same reason that it does not contain a representative of capital—that is the answer. The court represents neither side of the controversy, just as a court of law represents neither plaintiff nor defendant. Neither one of the litigants in a case at law is represented by a partisan on the court. They present their case by counsel of their own choosing. The court represents justice. The Industrial Court represents the public—the government with all its implied power. Its jurisdiction is limited to disputes between the employer and the employed in the essential industries of the manufacture of food, clothing, fuel and their transportation. It is not an antistrike law in the narrow sense. It offers a substitute for the strike and the lockout in vital industries. You must not take away from the laboring man his right to strike unless you give him a guarantee of justice under some tribunal that will be able to enforce its decrees.

FIRST PURPOSE TO PROTECT THE PUBLIC.

The prime purpose of the industrial law is the protection of the public against the inconvenience, the hardships and the suffering so often caused by industrial warfare. It protects every citizen in his God-given right to work, to support his family like a free man without molestation and without fear. It confirms the right of every man to quit, to change his employment, like a free man; but it forbids him either by violence or by intimidation to prevent others from working. It assures capital invested in the essential industries freedom from the great economic waste incident to industrial warfare. It offers a fair return upon such investments. It guarantees to workers engaged in these essential industries a fair wage, steady employment and healthful and moral surroundings. It gives to employers, to employees and to the general public alike an impartial tribunal to which may be submitted all controversies vitally affecting the three. It declares anew the democratic principle that the will of the majority legally expressed shall be the law of the land. It prohibits and penalizes the rule of the minority by means of intimidation. It prohibits trial of industrial disputes by gauge of battle, and it offers in place thereof a safe, sane and civilized remedy for industrial wrongs.

It has grown from public necessity, has taken root in the needs of the people as a tree grows from the soil. It is backed by the sentiment of the people of Kansas, has won their approval in every test, and is on the statute books to stay. It may have defects, as all new legislation has, as a rule, but it assuredly is a forward step in the right direction, and its faults can be, as time develop them, remedied by amendment.

In the near future it is probable the Congress of the United States will enact a similar law for the regulation and control of such industries as fall within the domain of congressional action. In time—and in a short time—the principles of the Kansas Industrial Court law will be put in force in all the states of the Union.

The Industrial Commandments.

WHEN the discussion of the bill was at its height, the Topeka morning daily paper printed what was called "The Ten Industrial Commandments." A copy of the paper was folded so as to present to view these Ten Industrial Commandments and placed upon the desk of each member of the house and senate. Many of the members clipped the article and kept it, and there was much favorable comment among them. The spirit of the law is tersely stated in these Ten Industrial Commandments, which are as follows:

TO ORGANIZED LABOR.

1. Thou shalt not permit any of thy members to place the union card above our country's flag.

2. Thou shalt not deny to any man, at any time, in any place, the right to work as a freeman and to receive wages as such.

3. Thou shalt not demand for any worker a good day's wages in return for a bad day's service.

TO CAPITAL.

4. Thou shalt pay a fair and just wage to each and every one of thy workers.

5. Thou shalt furnish a safe and healthful place in which, and safe appliances with which, thy employees may work.

6. Thou shalt operate thy business as continuously as its nature will permit, to the end that labor shall be regularly employed and that the public may not suffer for the living necessities furnished through the medium of thy activities.

7. Thou shalt not demand extortionate profits, but shall be content with a fair return upon thy investment used and useful in thy business.

TO THE GENERAL PUBLIC.

8. Thou shalt willingly pay a fair price for all commodities required by thee from labor and capital, to the end that labor shall have a just reward and capital a fair return.

9. Thou shalt pay thy taxes cheerfully and honestly, to the end that the obligations of the state to all its people may be promptly and properly fulfilled, liberty and justice safeguarded, and the general welfare assured.

TO EVERYBODY.

10. Thou shalt honor and love thy government, for it is the people's government, the best ever devised by man, and there is none other like it in all the world.

Legislative History of Industrial Court Bill.

(Senate Bill No. 1.)

THE special session convened on Monday, January 5, 1920. Governor Allen delivered his message in person to the joint body and in the presence of a big audience. The Industrial Court bill, which had been carefully prepared, was introduced in both houses as companion bills on Tuesday. The rules were suspended and both bills were advanced to second reading. In the house the bill was referred directly to the committee of the whole, a proceeding that made its hearing public and open to all, the senate being invited to participate in the hearings. Representatives of the labor unions, of employers' associations and the public were given invitations to present their cause. For the labor unions Hon. Frank P. Walsh led off with a seven-hour speech, followed by Hon. J. I. Sheppard, who talked four hours. Clarence Draper, chairman of the legislative committee of the mine workers, spoke next. Glen Willits, chairman of the joint state labor legislative committee, presided at all of the meetings.

For the bill, W. L. Huggins, chairman of the Public Utilities Commission, made a speech. J. S. Dean followed, representing the mine operators. Addresses were made by William Allen White and Dr. E. J. Kulp, representing particularly neither side, but the people at large. Practically one whole week was devoted to a free and open discussion in the house. On the senate side the bill went direct to the judiciary committee, receiving deliberate and critical consideration. Their bill was reported out for passage nine days after the bill went into their hands. It remained substantially the bill as outlined by Governor Allen, and no amendments were adopted altering its plan or purpose. On the eleventh legislative day it passed the senate on third reading by a vote of 33 to 5.

The senate bill went to the house and was substituted for the house bill with a few minor amendments, not affecting its character or emasculating its purpose. The house passed it as amended the same day by a vote of 106 to 7. Later the conference committee reported its recommendations, which were agreed to by a record vote, the law becoming effective January 24. nineteen days after the convening of the special session.

Excerpts from Address by Governor Allen.

KANSAS BANKERS' ASSOCIATION, MAY 20, 1920.

THE Kansas Court of Industrial Relations was created out of a great emergency. You are all remembering yet—although ten months is some time for an indignant people to remain indignant—the coal strike of last winter, when everybody was out of coal except the coal operators and the miners. The question arose at once as to whether the state had the moral right and the power to protect the helpless people, innocent victims of a conflict in the bringing on of which they had no part.

I asked the supreme court to give over to the state some sixty or seventy million dollars' worth of mining property in order that we might mine coal. I will never forget the momentary surprise of our splendid chief justice. He put his glasses up on his forehead and looked at me and said, "On what allegations?" I said, "Well, Judge, any allegations you think would work."

Men have been kind enough to give me some credit for courage in respect to state operation of the mines. I want to tell you the first credit for courage belongs to the supreme court of Kansas, which dared to do a new thing which was necessary at the moment.

PLEADS WITH THE MINERS.

After the mines had been taken over I went to the Pittsburg district for the purpose of urging upon the miners to go to work for the state, to relieve the public from the menace of the fuel famine. In justice to these miners I want to say that I think a very large percentage of them wanted to go back to work. There is in Pittsburg, as there is in humanity everywhere and in every community, in the banking profession, in the newspaper business and churches, a contest going on between two classes—the radical and the conservative. I believe that in the Pittsburg district forty per cent—maybe a larger per cent than that—were conservative and wanted to get back to work. None of them wanted to bear the responsibility for the suffering and terror that followed upon a fuel strike.

I promised the miners, if they would go back to work, that whatever agreement was reached by their national leaders, then in conference at Washington with the operators, would be made retroactive to the time they began work, and if on the first of January an agreement had not been reached the state would itself take up their case. Hundreds said to me, "We would like to do that; we think your proposal is fair," but that if they should go back to work their property would be in peril, their families humiliated and their very lives endangered.

The state then called for volunteers to take charge of the mines. The response to the call provides as fine an exhibition of their patriotism as has ever been given by the people of any state. More than ten thousand men, from every walk of life, enrolled. From this great offering we selected a sufficient number of young men to man the strip mines, choosing them largely from those who had been in the service of their country. I had seen this type of men in France overcoming such obstacles that I found it impossible to accept the philosophy that coal could be mined only by certain self-classified individuals, at certain hours of the day, under certain fixed regulations. I knew better!

I will never forget the first trainload of volunteers that unloaded at Pittsburg. The miners met the train. They had seen strike breakers before, and they came with certain things in mind which they were going to say to these boys. Then these lads unloaded from the train—keen, straight, kindly eyed, many of them dressed in the uniform of their country. They were so obviously what they were that it was utterly ridiculous to say to them anything the miners had come to say, and so the miners received them in silence.

Then our men lined up and began to march down the street. The weather was below zero and the Kansas zephyr was functioning. I remember one union miner out on strike who came up to one of these young lads in whom I had an interest. He said, "Well, Bo, you ain't going to the mines to-day. Why, the mines have been shut down for three weeks. There is a lot of water in them. The machinery is out of repair. Why, we couldn't mine coal out there." This lad never looked at him, but just answered out of the corner of his mouth and said, "Did you ever see any trenches in France?" This man hadn't, so he didn't have the answer.

PRODUCED THE COAL.

The first day they produced a car of coal, which went out west somewhere—I believe it was to Coldwater. Coldwater afterwards complained that it was not the usual grade of nut coal. But she took it, though I am firmly convinced that it was slack. Some of these young fellows were too enthusiastic and they sometimes put in a larger charge of powder than was really necessary and they reduced the lump coal to a finer variety.

At the end of ten days these lads had mined enough coal to relieve the emergency in two hundred Kansas communities. Then they realized that they were doing a greater thing, a more fundamental thing, than producing coal for the need of the public. They were proving to themselves and to Kansas that a state still has the power to protect its people against the dangers of a civil war, though that war may be called a "strike." These lads never asked what their wages were going to be. They worked from daylight until dark. They wrote as fine a page of patriotism as has been written in the history of Kansas.

THE LEGISLATURE CALLED IN SPECIAL SESSION.

While the operation was still in progress a special session of the legislature was called; not to pass a bill against labor, not to pass a bill against capital, but to pass a bill which would protect labor against capital, capital against labor, and the public against them both, or either of them.

Everybody who had any interest in the matter got in touch with Topeka at once, and there again the contest between the conservative and the radical broke out in the discussion as to the most effective way for union labor to make its protest. I believe the radicals wanted to bring 50,000 union men to Topeka and march seven times around the state capitol. Everybody who wanted to talk was allowed to appear before the legislature. Several representatives of union labor and employing capital were heard. Two or three impartial citizens, representing the general public, spoke, and then the legislature, after three weeks of careful investigation, passed the law with only seven votes against it in the lower house and five votes against it in the senate. It was written by the most careful and thoroughgoing consideration that any legislature has given yet to any law in Kansas. It is backed by the sentiment of the people to whom this legislature is responsible. It is on the statute books of Kansas, and it is not there for the entertainment of any radical union labor leader. It is law, and it is going to be enforced.

NOT ARBITRATION BUT ADJUDICATION.

The law is not another adventure in arbitration and conciliation. It is not a court of arbitration, as the courts of New Zealand, Australia and Canada are. It is a court of justice. It is an impartial tribunal. It says to the operator, "You shall not close down your factory or your mine or your railroad or your packing house for any purpose to affect wages or to affect the price of the commodity which the community needs." And down in the Pittsburg district the operation of that law calls for a reasonable continuity of mining. What does that mean? Well, down there in the past they have operated their mines about two days a week during the summer, because that was all the coal people needed just then. The only people that needed to build a reserve were the steam plants and the railroads; and so far as the indifferent, good-natured people were concerned, why it was better for the operator if the people of Kansas bought their coal after the first frost than if they buy it in July. Now the new law means that those mines will operate with reasonable continuity during the summer, and we should begin next winter with a coal reserve instead of a coal famine, and the miners will have the privilege of working through the summer, and stabilization of prices will result as the stabilization of production continues.

THE DIVINE RIGHT OF WORK.

Then we have said to the miners, "You shall not conspire to close down these mines for a purpose to affect wages or the price of this commodity to the community." We have not said to any man, "You shall not quit work." Mr. Gompers, in a speech delivered two or three days ago, declared I had taken away the divine right of men in Kansas to quit work. I have not. I have merely helped to take away Mr. Gompers' divine right to order a man to quit work. That is all. And we have provided for the divine right of any man who wishes to keep on the job to remain on the job, and we have provided for his protection in the orderly process of his working.

"Oh, well," you say, "you can't do that." Why can't we? Why, the quarrel between capital and labor is the only quarrel that government has

not taken over. We have done away with every other private fight, from dueling to fist fighting. If any of you bankers get into a fight to-night, out in the street in front of my window, and scratch each other up and tear each other's clothes and carry on until you waken me, I can have you both arrested, not for what you are doing to each other, but for waking me up. Why, there was a day when society never thought of that thing. There was a day, which many in this audience remember, when the only question ever asked as to a fight was as to whether it was a fair fight or not. Now the first question you ask is, "Where was the officer all the while this was going on?"

LAW REACHES EVERY RELATION OF LIFE.

Talk about the power of organized society to take over the relations of life! Why, the government has taken over the divinest relations of life. It regulates the husband and the wife, the parent and the child. It says to the parent, in this state at least, "You shall not allow that child to work in any factory or in any industry until the child has passed the age of sixteen years; and in the meantime you shall buy that child books prescribed by the government and see that the child is going to school." Through the most gigantic process of proper policy all over this Union the state has established a program that regulates the child from the day of its birth, when the doctor of the community is compelled to enter in a registry of the community the sort of child it is and the conditions of its birth, up to the day of its burial, where the state regulates the condition under which the man or child is buried.

ITS PRINCIPLE OLD AS CIVILIZATION.

The Kansas law is founded upon one of the oldest principles of human government. It constituted one of the laws inscribed upon the Roman tablet—*Salus populi, suprema lex esto*—let the safety of the people be the supreme law. All organized society has grouped about this general recognition of the salvation of the mass.

Those of you in this audience who are acquainted with the law remember, from Blackstone, that in the thirteenth century a blacksmith shop along the public highway in England was a public utility. The only mode of travel was by stagecoach or on horseback, and you had to have a dependable means of reshoeing the horse, and even that early they had discovered that men were greedy and would take advantage of the extremities of the traveler to charge too much for shoeing a horse. And so it was declared that the blacksmith shops should be public utilities and subject to regulation by government. Finally they declared that public inns were public utilities, because they found that innkeepers took advantage of the extremity of the lonely traveler; and so both inns and blacksmith shops came to be public utilities. That principle has grown until every nation in the world and every state in the United States, and finally the Federal government itself, declared that transportation, because it was impressed with a public interest, was subject to the regulation of government; and so we started out to regulate transportation. And what did we do? We regulated one end of it. We declared that safety devices were very neces-

sary, and we then made schedules of passenger and freight rates, and then we made hours of labor; but we never attempted to regulate the other end. We never said, until we said it here in Kansas, that no man or group of men should conspire to shut down transportation. Kansas has taken the principle and has added to the right of society to regulate one end of transportation, the right of society to regulate both ends of it, and to add to transportation food, fuel, clothing, as being the essential industries and needed for the protection of the public. We have not taken away from any man or from any group of men the right of collective bargaining. We have sanctified that principle, and with it have given new sanctity to the power of unions to make contracts and to keep them.

NOT LIKE THE AUSTRALIA AND NEW ZEALAND LAWS.

We have wronged no man in this law, and we do not propose in this law to see any man wronged. The other day, testifying before a committee on labor of the United States Senate, Herbert Hoover said that the Kansas law was almost an exact duplicate of the Australian law. I dislike very much to take issue with so eminent and useful a man as Herbert Hoover; but after reading his statement I am constrained to the observation that Mr. Hoover apparently has not made himself intelligent concerning the Kansas law. There is not a beginning of comparison between the Kansas law and the Australian acts, except that the Australian acts call them courts of conciliation and arbitration on industrial life.

What is the difference? The Australian and New Zealand courts, which are alike, were created in the first instance by union labor for the purpose of extending unionization. They provided, first, that nobody could get into the court except a chartered labor unionist, and the purpose of the court was to protect the agreements of arbitration. The orders of the Australian and New Zealand courts are in the nature of fines, collected by means of judgments in civil courts.

Then here is another thing: Any man might appeal from the decision of that court of Australia—might appeal from the procedure of the court—that is the language of the law—to Parliament. And an unfavorable decision from either branch of Parliament would knock the court out. Well, you know about what would happen if the aggrieved party in one of these contests had standing before him the right of appeal from the decision of the court to the Kansas legislature, or either branch of it. About how effective do you think it would be under that law?

The Kansas court is conditioned upon the demand for the protection of the public. The Australian court says, "We are to protect the agreements of capital and labor." The Kansas court says, "We are to protect the people. We will protect capital against labor; we will protect labor against capital; but we will protect the public against either of them or both of them."

The Australian court says, "If this man does not keep his agreements we will fine him and let the civil courts collect the judgment." The Kansas court says that these men shall come into a court of justice and the penalties are thus and so, and there is only one appeal, and that is directly to the supreme court of the state.

The Australian court says that before a man goes into the court he shall guarantee to the court the payment of all the lawyers' fees and the costs of the case, and that the Australian court may require of the aggrieved party a guaranty that the costs will be paid to it. The Kansas court says that any man or any woman may come into it without payment of a cent of cost, and the state will pay the cost. Why, as the presiding judge of this court once said, it might be called the court of the penniless man or the penniless woman. You come into court and present your grievance—with or without a lawyer, as you prefer—and the court says, whatever you need for the protection of your case, for the development of all the facts in the case, you shall have. If you need a lawyer, the state gets you a lawyer; if you need an expert in the mining business or packing business or telephone business or street railroad business, or light business, or a welfare worker of the state, the state provides you that which you need. And after you have developed all the facts in the case and the court has handed down its decision, if you are not satisfied with the decision of the court you may appeal your case to the supreme court. Here again you are given, without cost to yourself, a transcript of the evidence, an expert worker, or anything you want to develop your case; and then when your case has been decided by the supreme court, it is decided. And then you work under the conditions prescribed. The condition goes on, and in the meantime the operation of the industry has not ceased. My friends, there is more ground upon which to compare the Australian court with the report of the Second Industrial Conference, the one Mr. Hoover helped to write, than there is to compare it with the Kansas Industrial Court law.

DIFFERS FROM THE SECOND INDUSTRIAL CONFERENCE.

The Second Industrial Conference provides for conciliation, followed by arbitration, followed by judgment of the public expressed in town meetings and newspaper interviews.

The Australian court is conciliation, followed by arbitration, followed by a judgment of the court, which is never complied with.

The Kansas court is the adjudication of law, followed by orderly process of law. It is followed by decisions which settle the matter.

I think that the Second Industrial Conference report, if it is ever made a program of law, will work just about as indifferently as the Australian courts have worked. I don't wish to stand here to condemn the Second Industrial Conference report. I think it is one of the finest human documents I have ever read. It has in it more sermons than anything I have found, in anything that I have come across in the last twenty-five years. But it is all sermons; it all belongs to the beautiful phraseology of the study of industrial strife, and it decides nothing. In Kansas we have provided in our Industrial Court law for practically everything they have provided for under the Second Industrial Conference report. We provide for conciliation in our law; we provide for arbitration in the Kansas law. We realized in Kansas that the industrial peace which is most enduring is that founded upon mutual understanding and mutual advantage and mutual interest and friendship and confidence. Under the Kansas law we provide for all the beautiful process of conciliation that the Second Indus-

trial Conference provides for; but where the Second Industrial Conference stops and leaves it to the judgment of the public, we go on and leave it to the judgment of an impartial court. I contend that in Kansas we have done the thing society has the right to do—to provide the safety that the public has a right to expect.

PRACTICAL RESULTS.

In the last three months, while we have operated—two and a half months in the district—certain cogent facts stand out. We have mined more coal in that three months under the Kansas law than any five and a half months in the history of the district has produced in former times, with the same number of miners. Last year, up to this time, there were seventy-eight separate and distinct strikes in the Pittsburg district—seventy-eight. This year there has been no strike. "Oh, well," you say, "Howat says there has, you know." But the other day I read Howat's reply in court, and he is going to be in court a good deal of the time for the next few weeks—either in court or in jail. It is up to him. I am indifferent, so far as I am concerned.

BLUE MONDAY AND NO STRIKE.

Now, as I started to say, in his answer in the court he had declared that the men who went out, attracted by the novelty of his being in jail, were not out on strike. It was not a strike; hence, that he did not violate the law. Of course, here is what happened. The court was created on Saturday. The next Monday some four hundred men went out on what they called a protest against the law. The attorney-general went into the district for the purpose of explaining to the officers of this group of men what was about to happen to them. And after they had taken the matter up and explained the equal balance that was in the law, these officers said, "Well, we are going back to work in the morning. It is just 'Blue Monday,' anyway, and not a strike."

THE COURT AND HOWAT.

Then a significant thing happened. While the attorney was down in that district a group of miners having a grievance came and presented their case to him. That was significant for this reason, that if they had followed the usual process they would have taken their grievance to the head of the local, who would have taken it to the district president, who would have taken it to the national organizer, and so on, and then finally we would have read about a strike. But instead of going through this process these local miners are going over the heads of their own officers. They came voluntarily to the court, and the court went to the Pittsburg district to take testimony in the case of these miners, and they summoned a hundred miners, who came in and testified in the most sympathetic and coöperative fashion. Then they called Howat, and he refused to come; and they sent a subpœna, and he refused to come. His officers said they didn't like the law and didn't believe in it, and they had gotten a peculiar crook in their minds that obeying the laws depended somewhat upon their own personal taste about the law. So it was necessary for the judge of the district court to send for Alexander Howat, because Alexander Howat had refused to

come into court in obedience to the subpœna. Pittsburg had never witnessed a scene like she witnessed in the courthouse the morning that Howat arrived. Why, do you know that the great public down there has now come to a new Declaration of Independence? But for a long while they carried on their life according to Howat, who was the head of the Miners' Union in that district—the Miners' Federation. And then one day Judge Curran was elected judge—a Democrat in a Republican community—by the votes of union miners. But on the night after he made his decision as to Howat, everybody went home saying, "Oh, poor Curran. He has ruined himself." But the next day he was the most popular man in town, and people went around talking about the desirability of putting Curran on the Democratic ticket for the supreme court of the state. On that morning they witnessed in this courtroom, filled with miners, this courageous judge, elected in that district through the help of those miners, but remembering that he was the judge of the state, say, "Alexander Howat, stand up!" And the miners said, "Will Alexander obey a voice like that? He never has." But quick as a flash Alexander Howat stood up; and Judge Curran said, "I sentence you to jail, to stay there until you are ready to testify before the Court of Industrial Relations. Sit down!"

What was it? It was government speaking to Alexander Howat—your government, my government, his government. So he went over to jail.

The next day about six hundred men from the "red" district—the Pittsburg mining district is divided up into a color scheme; tolerably red, more red, and awfully red—about six hundred miners went over to give Alexander a reception at the jail. They surrounded the jail and called for a speech, and the sheriff, a chummy sort of man, led Alexander out on the balcony, and he addressed the assembled miners, saying plenty. The miners said that was an awfully good start, just to make a monkey of this law; but Alexander didn't have enough for a real reception.

They thought they would go back home and get him up a real reception. So they went back home and began to work the matter up, and two days later they had five thousand. If I understand the matter right, it was their intention to borrow Alexander from the jail and have him speak in the grove. Well, when they got there Howat had been moved from the jail over to another town where they had a better idea of what the law meant. The sheriff lost his job. And there was Hamlet, with Hamlet left out, and everybody said: "Now, watch them! Now is the dangerous time. If these miners are as mad as Howat is they will cut up some. They will do something dangerous. They will break a window in this jail, or something like that." And so we all watched with bated breath, and the miners looked at each other, and some fellows started a laugh and some fellow said, "The joke is on us." The next day some of them went back to work, and the next day a few more went back to work, and four days later Howat himself asked Judge Curran to let him out of jail upon an appeal bond. Howat had had enough of it.

It was not a strike. It was the men individually in that district quitting work to go over and see the man who had been the master of the district in jail, and give him a proper reception. Now next month there is coming before the supreme court of Kansas this law upon trial as to its constitu-

tionality. I have no doubt as to the constitutionality of the law, because many of the best lawyers in this state have passed upon it and helped to frame it.

We are now going on in that district to make a welfare canvass to determine whether the housing conditions and the working conditions are proper. In all the years when the miners have been held under the subjection of their own people they have never had a welfare canvass. It is my belief, my friends, that when this law is operated a year the best friends of this law, the men who will be willing to rise and fight for it, will be the men that it protects the most—the laboring men.

THE SUBMERGED NINE-TENTHS.

And yet the law is not passed to punish the employer. The law is passed to establish a process of equal and exact justice between the two in order that the public may be preserved, because we have realized that throughout the past society has been the victim every day of the growing industrial unrest. There are one and one-half per cent of the people at the top and five and one-half per cent of the people at the bottom, and in the middle is the great ninety-three per cent—the one and one-half per cent representing the employers, and the five and one-half per cent representing the unions, and the fight has been going on between them with changing success; sometimes one on top and sometimes the other, according to the uncertainties of the fight. But the ones who have chiefly suffered have been the ninety-two per cent of the population—the good-natured, protoplasmic mass, having no strength except the strength of passive resistance; and then out in Kansas when they threatened to freeze this mass it took on nerves and muscles and all the courage and strength that come out of righteous indignation, and said, "It is time for the submerged ninety-two per cent of the people to come out and declare in favor of its own defense without injustice to the individual. And that is what we have done, my friends.

NOT THE SPIRIT OF BROTHERHOOD.

While we were mining coal there last winter a poor woman came to me, bearing all the sordid marks which hopeless poverty place upon a life. She said: "I have spent the last dollar I had to come here from Weir City to tell you my troubles. My husband has been on a strike for six months. He doesn't even know what the strike is about. We have been keeping the family together and the children in school on strike benefits of $8 a week. We were so poor that when your volunteers came down to the Italiana mine near my house I went down there to see if I couldn't get some washing and mending from those boys. I brought home a nice lot of work, but last night a committee from my husband's own union called upon me and told me that I was not to do that work and I was not to go back to that mine."

Surely, surely, government may foster a better spirit of brotherhood than that.

They had a hospital in Pittsburg, builded out of the pride of the community by popular subscription. It was full of sick people. When I had been there a few days two miners called upon me and said they had been supplying the hospital with coal out of a small shaft, but requested me to

supply them with coal in the future. When I declined, they said, "Unless you give us coal there'll be no fuel for the hospital, because our leaders have warned us this morning not to produce another pound of coal for the hospital. If you don't give it to us there will be death in the hospital by to-morrow night as the result of no fuel." So I allowed them to drive their trucks to one of the mines the state was operating, and for three days we mined the coal and they hauled it. On the fourth day these men came back and asked if I wouldn't haul the coal. They said, "The truckmen have gone upon a sympathetic strike," and that nobody in Pittsburg dared touch a pound of coal. The hospital was full of union miners and their families, and unless I consented to haul the coal there would be death there. So for several weeks we mined the fuel and hauled it to the hospital and kept a lot of union miners alive on scab coal.

Surely government may foster a better spirit of brotherhood than is indicated by this incident.

FOURTEEN DECISIONS IN WAGE CONTROVERSIES.

The Kansas Court of Industrial Relations law has been in force since last February. It has rendered fourteen decisions in causes brought by the representatives of organized labor, and every one of these decisions, except one, which has been appealed to the Federal court, has been accepted as satisfactory, both by labor and by capital. There have been two cases brought by employing capital, in which the decision of the court has been accepted by labor and the general public.

In spite of the fact that every decision of the court has indicated its capacity to serve and its disposition to render exact and impartial justice, every union-labor leader is fighting the law and urging other states that are now considering the law, not to adopt it. In my state during the last election they united with all the radical forces, and men who had not even read the law went about condemning it and misrepresenting it.

A PLEA FOR A FAIR TRIAL.

Why don't they give it a fair and honest trial? Why do labor leaders devote their hatred to it? Why does Gompers take money from the fund which is his trust to hire men to go over the country misrepresenting it?

I'll tell you why—it is because these labor leaders realize that if government may find justice for the employee in his controversy with his employer, then there will no longer be any reason why laboring men should pay out of their pockets every month a share of their wages to keep going a lot of soft-handed radicals who make their living off the quarrels they foster between labor and its employers.

A FAIR WAGE DEFINED.

Two or three cases decided by the court illustrate its spirit and its power of service. One of the first causes was brought by the carmen of the Pittsburg, Galena & Joplin Railroad Company. There had been two strikes in that railway company, one in 1917 and one in 1918. The one in 1918 lasted ninety days, costing the strikers many thousands of dollars, costing the community millions in loss of transportation, and at the end of ninety days

the strikers came back to work at the old wage, having gained nothing. When the court was set up these men brought their causes before it, and the petition asked for a "living wage." The presiding officer of the court, in rendering the final decision, called attention to the fact that the legislature had not seen fit to endow the court with the power to grant a "living wage." The language used by the legislature in creating the court declared that the court should grant to every laboring man a "fair and just wage."

What is a living wage? It is a wage sufficient to meet the cost of living.

A fair and just wage is a living wage, plus enough to enable a laboring man to give to himself and his family some of the blessings of modern life, plus enough to enable him by reasonable frugality to build a safeguard against sickness and old age. So the court gave to these men a fair and just wage.

And then the other crafts of this railway company, taking the award of the carmen as a basis, got together with the proprietors of the road upon an agreement for all the employees, and peace reigns in a district where before this there had been two devastating strikes, and there would have been another one this winter but for the court.

INVESTIGATES LIVING AND WORKING CONDITIONS.

Out at Goodland, Kan., the Rock Island railroad employees in a car shop had been trying for years to get the Rock Island Railroad Company to inclose the car-repair shop. In 1905 they had a law introduced in the legislature declaring that every railroad company must inclose its repair shops. When the law came out of the hopper, having fallen victim to the clever manipulations of some railroad representative, it read that every railroad company *might* inclose its car-repair shops. So for fifteen years more they continued to quarrel about the case. Then the Industrial Court was set up, and the employees read in the law this great provision: "Every such laboring man is entitled to a fair and just wage and a wholesome and healthful place in which to work."

This is the first time any parliament or legislative body in the world has ever standardized the rights of labor in a succinct declaration like that. And so the Rock Island employees brought their cause before the Industrial Court under that great authorization. The Industrial Court heard the case, and on the 31st day of August, 1920, ordered the Rock Island to inclose the car shops and have it done by the first day of November. The work is done, and a fifteen-year-old wrong is righted because the court had the spirit to make a decision and the power to back its word.

AN ABUSE ABOLISHED.

The court discovered that there had grown up in the Pittsburg district a greedy practice of discounting a man's wages ten per cent if he drew his pay before payday. Under the law payday is once every two weeks, but if a miner had worked a week and could not wait until payday for his money he could go to the operator and collect his pay a week in advance, and the operator discounted his pay ten per cent—that is, he charged him ten per cent for the use of the money for a week, a rate of 520 per cent per annum.

This greedy practice had prevailed in that district for twenty-five years,

and no miners' official had ever protested against it. When it came to the attention of the court, the court wiped it out in eighteen minutes.

WHEN ARBITRATION FAILS.

The Kansas court contemplates all of the program laid down in the Second Industrial Conference. It encourages conciliation and arbitration between contending parties, but when conciliation and arbitration fail, then, instead of leaving the controversy to public sentiment, as the Industrial Conference would do, it leaves the controversy to a court of justice which has power to decide it.

It realizes that social justice is the best insurance against social unrest, and its hope is that through the introduction of its just balances it will bring all men to a new realization of the pride which should be in the craft of a good workman.

We need to come to the realization in this country that increasing wages and decreasing production intensifies misery and suffering and brings disaster to every human individual.

Limitation of production enriches nobody, but impoverishes everybody.

When restricted production increases the price of necessaries, the great sufferers are the wage earners, for they are also great consumers.

No readjustment of either prices or wages can meet or improve the situation when the fundamental cause is the insufficiency of production to satisfy the effective demand.

GOVERNMENT DEFINED.

The finest definition of government that I have ever read—men are always telling us what government exists for; that it is for this and that great purpose—but the finest and most comprehensive definition that I know of came from John Adams, who said, "The chief aim of government is justice." And that is the chief aim in all of human relations; and there is only one place in which we may establish it and impartially administer it, and that is in government. Unless we can stand as the American people for that moral principle, then exit democracy.

There is no doubt about the outcome of the struggle. The only thing we need is to preserve the integrity of the balances of justice—that they be just alike to capital and to labor, and that the chief interest of the public is to see that our judgments shall rest upon the sacred right of organized society to the protection of government.

Industrial Justice.

ADDRESS BEFORE THE INTERNATIONAL CONVENTION OF ROTARY CLUBS, ATLANTIC CITY, N. J., JUNE 22, 1920.

By W. L. HUGGINS, Presiding Judge, Court of Industrial Relations.

IT HAS devolved upon our generation to find a solution for some of the biggest problems of all time. The challenge of despotism to democracy called many millions of liberty-loving men from widely separated countries to the battle fields of Europe, there literally to "crowd the road to death as to a festival." By such sacrifices of blood and treasure as were never before witnessed, the tyranny of kings, emperors and military dictators was definitely defeated.

We are now in the midst of a most brutal and destructive industrial warfare. It is world-wide. If prompt and concerted action be not taken the present struggle may yet prove disastrous to liberty and democracy, and the fruits of our military victory may be turned to ashes.

The new battle is being waged around the relations of employer and employee, capital and labor, the wage payer and the wage earner. Selfish, cruel men are seeking to inflame class against class, the poor against the rich, the ignorant against the intelligent. Civilization is threatened with such a disaster as always follows socialist or communist ascendancy. Organized religion and organized philanthropy deserve unstinted praise for their efforts to substitute altruism for avarice in the industrial relations. If employer and employee alike could accept the Golden Rule as the governing principle of their activities, industrial peace and good will would soon flourish where hatred and bitterness now prevail.

CONCILIATION AND SETTLEMENT.

Every effort toward conciliation and settlement of disputes, every influence looking toward harmonious relations between employer and employee, should receive encouragement from every man who loves his fellowmen. But, ladies and gentlemen, no people have ever yet been so highly advanced in civilization that the Golden Rule could be wholly substituted for the Ten Commandments. The "thou shalt not" of constituted authority is as necessary to-day as it ever was in the history of the race.

MODERN INDUSTRIAL CONDITIONS.

Under modern conditions in all the principal commercial countries of the world, in certain essential industries, employers and employees seem to be gathered into armed and hostile camps. Employers are thoroughly organized under the laws of incorporation. They speak on all matters of mutual interest with one voice. The employees, on the other hand, are organized with equal thoroughness under the modern labor unions and confederations of labor unions. They also speak with one voice on all matters of their mutual interest.

The responsible head of a great industrial corporation refuses to meet his employees and discuss with them matters in dispute. The responsible head of the organization to which his employees belong, in retaliation, calls a strike. The strike is attended with the usual features of violence and intimidation. The employees not only quit work themselves, but by force and arms prevent others from working in their places. The employers call upon the state to protect life and property and preserve the peace. The military or constabulary is called upon and civil war ensues. Great economic waste results. Some men lose their lives. Women and children suffer for the necessities and comforts of life. The industry ceases and the general public is called upon to suffer with the combatants. In the end no good is accomplished and the bitterness of hatred is engendered which will last for a generation.

A few years ago a strike occurred in the transportation industry of a great American city. The usual features of intimidation were present. The milk supply which had been carried into and distributed throughout this great city by these transportation companies was shut off. Before the strike ended hundreds and perhaps thousands of babies sickened and died for want of milk. Can it be said that government is powerless to prevent such an atrocity?

During the bitter cold of last December one man, the head of a great labor trust, with an arrogance which has seldom been witnessed and with unfeeling cruelty in his heart, declared that not a pound of coal would be produced in the prairie state of Kansas until he should be pleased to permit it. At his command every coal miner refused to work and every mine in the state was closed. He even refused to permit a small quantity of coal to be produced to warm a hospital in his own home city. His criminal arrogance, but for prompt action by the governor, would soon have resulted in terrible calamity and might have caused the loss of thousands of lives. Yet at that time this autocratic head of that labor trust was not violating any written law of the land. Can it be said that government has no right and no power to prevent such an outrage?

The head of a great industry engaged in the manufacture of the necessaries of life may arbitrarily close the plant. If the cessation of the business should continue for any great length of time, no doubt, great suffering would result to the employees; but further than that, the already tremendous cost of necessaries for the general public would be greatly enhanced. In only one state of this Union, so far as I am informed, does any law exist which even attempts to protect the public from the evils attending upon such conditions.

TYPICAL CASES OF OPPRESSION.

These three instances are typical. The conditions which they illustrate have become intolerable. Such conditions in all the Anglo-Saxon countries have existed for more than a generation and are constantly growing worse. The few feeble efforts made toward the establishment of industrial justice by means of legislation have proved of little value. Until very recently no attempt has been made to compel settlement of industrial controversies by adjudication, nor to protect the people from the evil effects of strikes, lockouts and boycotts.

PRESERVE DEMOCRACY.

If democracy is to survive we must evolve a lawful solution of these constantly recurring industrial disturbances which so vitally affect the peace and prosperity of every class of our people. Public necessity is insistent. Democracy's implacable foes—bolshevism, communism, socialism, and anarchy—feed and fatten upon the aftermath of industrial war as did the vultures upon the bodies of the slain after the battles of antiquity.

ANGLO-SAXON LAW AND LIBERTY.

We Americans are members of the Anglo-Saxon family. English is the language of our laws, our courts, our literature, our schools and our firesides. The ideals we hold are Anglo-Saxon ideals. The common law of England, as it was brought to these shores by Captain John Smith and his friends in 1607, is the foundation of our legal system in every state of the American Union, with the single exception of Louisiana.

The common law has followed the British flag around the earth and is a part of the judicial system of every English-speaking people. The common law, as modified by legislative enactment and judicial interpretation to meet the needs of the American people, has followed the stars and stripes to the remotest boundaries of our continental republic; and, gentlemen, wherever that law exists, whether within the great democratic British empire or the greater imperial American republic, liberty and justice prevail. The Anglo-Saxon peoples have two governments, two flags, but one language, one law, one liberty. They are essentially one people. In seeking a solution for our industrial problems, in providing a remedy for industrial wrongs, let us look to the fountain head, let us study the established principles of the common law.

THE COMMON LAW.

It has been said by eminent American jurists that—

> "The common law grew *with* society, not *ahead* of it. As society became more complex, and new demands were made upon the law by reason of new circumstances, the courts, originally in England, out of the storehouse of reason and good sense, declared the 'common law.' But since courts have had an existence in America, they have never hesitated to take upon themselves the responsibility of saying what is the common law."

That—

> "The flexibility of the common law consists not in the change of great and essential principles, but in the application of old principles to new cases, and in the modification of the rules flowing from them, to such cases as may arise; so as to preserve the reason of the rule and the spirit of the law."

That—

> "The inexhaustible and everchanging complications of human affairs are constantly presenting new questions and new conditions which the law must provide for as they arise; and the law has ex-

pansive and adaptive force enough to respond to the demands thus made of it, not by subverting but by forming new combinations and making new applications out of its already established principles."

THE LAW SPRINGS FROM THE NEED OF THE PEOPLE.

Thus the law in all Anglo-Saxon countries springs from the needs of the people and keeps pace with the developments of civilization. Every permanent addition to the law of the land takes root in public necessity and grows from such necessity as a tree grows from the soil.

THE PRINCIPLE OF PUBLIC INTEREST.

Under the common law, since very ancient times, certain industries and vocations have been regarded as impressed or affected with a public interest. The inn, the blacksmith shop, the gristmill are familiar examples. Two hundred and fifty years ago a noted English jurist, Sir Mathew Hale, stated the principle of public interest in language which has been frequently quoted by law writers and by courts. Sir Mathew said, in substance, that if the king himself be the owner of a public wharf which all must use who come to that port to unload their goods, then the charges which the owner may make for the use of his wharf and other loading facilities must not be exorbitant, but must be reasonable and fair, because the wharf is now impressed with a public interest and is no longer a matter of private right only. This is the principle of public interest as accepted in all the English-speaking countries. In the United States upon that principle the government regulates that class of industries known as "public utilities" in the interest of the general welfare.

THE LEGISLATURE ADHERED TO ESTABLISHED PRINCIPLES.

However, under the American system, the legislative body is often called upon to declare and extend the law to new conditions. The legislature of my state, in attempting to find a solution for industrial problems, adhered strictly to the established principles of the common law. In enacting our industrial code we have not attempted to destroy, nor to alter, nor to remove any of the ancient landmarks of the law. We have founded this legislation upon the principle that certain industries and vocations are affected with a public interest. We have added to the long-accepted list of industries so affected those which directly and vitally influence the supply of food, clothing and fuel. These three classes of industries, together with those which heretofore have been known as public utilities, are deemed "essential industries," and are by legislative action declared to be subject to regulation. If the railroads, telephone lines, electric plants and other similar institutions are so affected with a public interest as to be subject to regulation by the state, surely the law-making body has authority to designate industries vitally influencing the quantity and quality of food, clothing and fuel of the people as affected with a public interest. Owing to the experimental nature of this legislation, the framers of the law deemed it advisable not to include at this time, among the essential industries, the building trades. However, upon principle I am inclined to believe that the building trades ought to be, and eventually will be, included within the provisions of the law.

THE NEW FEATURES.

The legislature of my state, in this new industrial code, has attempted to do two new things only:

First: It has declared impressed with a public interest the manufacture of food and clothing, and the production of fuel.

Second: It has declared labor, as well as capital invested and engaged in these essential industries, to be impressed with a public interest, and to owe a public duty.

The other provisions of the law merely establish the procedure by which the Court of Industrial Relations functions in adjudicating controversies and in the regulation and supervision of the essential industries "for the purpose of preserving the public peace, protecting the public health, preventing industrial strife, disorder and waste, securing the regular and orderly conduct of the businesses directly affecting the living conditions of the people . . . and in the promotion of the general welfare."

NOT ARBITRATION.

The Kansas Court of Industrial Relations is emphatically not a tribunal for arbitration. It is, therefore, fundamentally different from the labor courts of Australasia. The Kansas law is based upon the principle of adjudication, not arbitration. Neither of the three members of the court has any interest in the controversy. It is intended that they shall be as impartial, and, if you please, as ignorant as the judges of the supreme court of the state. The law provides for the adjudication of industrial controversies in the same orderly way, by the same kind of tribunal, as has been used in the adjudication of all other classes of controversies for hundreds of years. The Anglo-Saxon people in general accept without question the authority and jurisdiction of their courts to adjudicate all matters affecting the life, the liberty and the property of the citizen. If a man's right to live is justiciable, if his liberty, which to the Anglo-Saxon is dearer than life itself, can be taken away from him by the judgment of a court, surely disputes as to wages, hours of labor and working conditions are also subject to adjudication by the courts. A man who has no faith in the courts has no faith in and no love for democratic institutions.

PROVISIONS OF THE INDUSTRIAL CODE.

The Kansas industrial code provides for a Court of Industrial Relations, consisting of three judges to be appointed by the governor for definite terms. It provides that, in case of a controversy between employers and workers, or between crafts or groups of workers, engaged in any of said industries, if the controversy shall reach the point that it endangers the continuity of service, the supply of the necessaries of life, threatens the public peace, endangers the public health, or affects the general welfare, that the court, upon its own initiative, or upon the application of either party to the dispute, or upon the petition of the attorney-general, or upon the complaint of ten citizen taxpayers of the locality, shall take jurisdiction, shall investigate, determine and adjudicate such differences, make findings of fact, and issue an order in the premises. By such order the court may fix rules and regulations concerning hours of labor and working conditions,

and establish a minimum wage or standard of wages, all of which must be observed by both parties unless changed by agreement of the parties and approval of the court. It provides that if either party to the controversy be dissatisfied the matter may be taken directly to the supreme court of the state for review, and shall be by the supreme court given preference over other civil cases in the matter of an early hearing. Throughout the controversy and litigation the industry must continue to operate. In other words, when a private quarrel between employers and employees approaches the point at which open hostilities and industrial warfare are imminent, when the homes of the land are threatened, when the health and comfort of women and children are jeopardized, the state, in the exercise of its police powers, steps forward and says: "Hold! Thou shalt not; thou shalt not."

PROTECTION OF THE PUBLIC.

The prime purpose of the industrial law is the protection of the public against the inconvenience, the hardship and the suffering so often caused by industrial warfare. This is an experiment in government, not a problem in sociology. However, while the Kansas industrial law is founded upon the proposition that the government has the power and right to use any means necessary to preserve the public peace, protect the public health and promote the general welfare, yet the law also guarantees Anglo-Saxon justice both to employer and to employee. It protects every citizen in his God-given right to work, to support his family like a free man without molestation and without fear. It confirms the right of every man to quit, to change his employment like a freeman; but it forbids him, either by violence or by intimidation, to prevent others from working. It assures capital invested in the essential industries freedom from the great economic waste incident to industrial warfare. It offers a fair return upon such investments. It guarantees to workers engaged in these essential industries a fair wage, steady employment and healthful and moral surroundings. It gives to employer, to employee and to the general public alike an impartial tribunal to which may be submitted all controversies vitally affecting the three. It declares anew the democratic principle that the will of the majority legally expressed shall be the law of the land. It prohibits and penalizes the rule of the minority by means of intimidation. It prohibits trial of industrial disputes by gage of battle, but it offers in place thereof a safe, sane and civilized remedy for industrial wrongs. In other words, the Kansas law is founded upon the old principle of public interest announced so long ago by Sir Mathew Hale, but it has extended that principle to meet modern conditions.

CORPORATE AND INDIVIDUAL RIGHTS.

Some have called this effort to compel capital and labor to cease industrial warfare an infringement of corporate and individual rights. If so, it is simply a restatement of the old principle that the rights of the many are superior to the rights of the individual; that every man's rights leave off where his neighbor's begin; that no man may so use his own as to injure others.

WHAT THE LAW GIVES THE WORKER.

It is the glory of Anglo-Saxon jurisprudence that it affords a remedy for every wrong and that justice is administered by impartial tribunals according to established rules. The Kansas industrial code provides a remedy for wrongs inflicted upon the public by industrial disputes, but it also carefully guards the rights of the parties to the dispute. The law "withholds no good from them to whom it is due." The legislature of my state in the Court of Industrial Relations has provided a tribunal in which justice is administered without money and without price. The penniless man, if he be engaged as a worker in any of the essential industries, may come into this court with his complaint. He is not required to give security for costs nor even to pay his own witnesses. The state provides him with legal advice, with expert accountants and engineers, and with trained examiners who will investigate his case, prepare his evidence and present it to the court without a penny's charge. The law enjoins upon the court that it shall do all things necessary to develop the facts in the case.

A FAIR WAGE.

The law does more than this for the worker. It provides that if he be dissatisfied with the adjudication of his case by the Court of Industrial Relations he may take it for review to the supreme court of the state. The transcript of his evidence is prepared for him, and he goes with his grievance and with all his evidence to the supreme court, still without a penny's cost. I am not aware that any other legislature or parliament in any state or country has ever created such a tribunal to which the penniless man may come and receive the same treatment as though he were a millionaire.

The law does more than this for the worker in the essential industries. It has expressly declared that it is necessary for the general welfare that he shall receive a fair wage and have healthful and moral surroundings while engaged in his labor. The duty is thus placed upon the Court of Industrial Relations to determine in each controversy what is a fair wage. The court has already, in one of its orders, defined a fair wage. It has said that a fair wage is one which will enable the frugal and industrious working man to provide himself and family with all the necessaries and a reasonable share of the comforts of life; that, in addition thereto, a fair wage should provide opportunities for intellectual advancement and reasonable recreation; that a fair wage should be such as to enable the parents working together to provide the children with good, moral surroundings, opportunities for education and a fair chance in the race of life; that a fair wage should enable the frugal man to provide for sickness and old age.

UNORGANIZED LABOR.

Further than this, the law has extended to unorganized the same opportunity as to organized labor, and so the individual worker on his own responsibility may invoke the jurisdiction of the court to protect him.

As stated before, the prime purpose of the Kansas industrial law is the protection of the public. No permanent benefit can accrue to the public from any law which does injustice to any class of citizens. The features

of the Kansas law which are so beneficent to labor, I believe, are the surest guarantees of permanency. The most sacred right—the right upon which all other rights depend—is the right of the individual to work to support his family like a free man. This right at certain times and under certain circumstances and conditions has been denied to men all over this country.

COLLECTIVE BARGAINING.

The Kansas law does not prohibit the closed shop. It specifically recognized the right of collective bargaining. It does specifically prohibit and severely penalize the use of duress, intimidation and violence to prevent men from working. It contains the provision that, "The right of every person to make his own choice of employment and to make and carry out fair, just and reasonable contracts and agreements of employment is hereby recognized." Every wage order issued by the Court of Industrial Relations is temporary in its nature. The law provides that such an order "shall continue for such reasonable time as may be fixed by said court, or until changed by agreement of the parties with the approval of the court." When the public emergency which caused the court to take jurisdiction has safely passed, then the industry resumes its former status.

AN EXPERIMENT.

I have tried to tell you some of the fundamental principles upon which I believe industrial legislation must be founded and by the application of which our pressing industrial problems must be solved. I am not presenting the Kansas law as a model. The needs of other states may be vastly different from ours. The Kansas law has been in force a little more than six months. Nothing has yet occurred to show any serious defects in the law. While the big labor leaders have shown great hostility, many laboring men indorse it. There have been twelve cases brought in the court by labor organizations. Ten of these cases have been decided. No appeals have been taken by labor and only one by capital. No labor leader or labor organization has called a strike in Kansas since the law was enacted and no serious cessation of work in the essential industries has taken place. This, we realize, is luck too good to last always. It is probable that a serious test of the enforceability of the law may come. If it should, I wish to assure you Kansas will go to the mat and stay in the fight till one side or the other shall be "counted out."

We are not boasting. We fully realize the force of the Scriptural injunction, "Let not him who girdeth on his harness boast himself as he who putteth it off," We realize that we are operating in the experimental stage, but we are going forward with great confidence. We believe our industrial code will stand, for we have builded it upon the firm foundation of the common law. We have a state of approximately two million population. I feel safe in saying that seventy-five per cent of our people are of Anglo-Saxon stock, and I also feel confident in asserting that practically all of the other twenty-five per cent are fully imbued with the Anglo-Saxon spirit. The spirit is more important than the blood.

A LAWFUL FORMULA NEEDED.

In going about the solution of our industrial problems we should keep our hearts warm and our heads cool. They must be solved by lawful formulas, for in civilized countries the law is supreme. The law should assure justice to every man. Every industrious, faithful and frugal worker should have the opportunity to provide himself and family with a decent and comfortable home, wholesome food and clothing, and means of moral and intellectual improvement. To that end industrial warfare should be prevented, and wages to labor, as well as returns to capital, should be protected by law. With such measures administered in an altruistic spirit, within this generation we ought to be able to abolish the unsanitary tenement and the wretched hovel and make it possible that every child may be nurtured in a real home.

LAW OBEDIENCE NOT DEBATABLE.

There is one question that I will not debate with any man. It is the question of obedience to the law of the land. Loyal, patriotic citizens will obey the law from choice, and the other kind will obey it from compulsion. I believe that the great majority of organized workmen in America are loyal and patriotic. I believe the most obnoxious tyranny ever exercised in this country is the tyranny of the autocratic labor leaders of to-day. I am, however, not disturbed by the loud boasting of some of the alleged leaders that "organized labor will not give up the right to strike, law or no law." But this declaration on the part of some of the responsible heads of organized labor has joined the issue in this country. The question thus is: "Shall democracy prevail and the will of the majority legally expressed remain the law of the land, or shall bolshevism take the place of democracy?"

Address of Hon. F. Dumont Smith.

[Mr. Smith, of Hutchinson, Kan., is one of the leading attorneys and authors of Kansas and a former state senator.]

I AM going to open my remarks with a parable. Bill and Joe owned adjoining farms, and, as frequently happens, there was a dispute over the line fence. Bill thought his fence ought to go over into Joe's farm about four rods, and Joe thought his fence should be over on Bill's farm about four rods; and there is nothing that makes a more acrimonious dispute than a line fence, unless it is a row in a church. One day Bill and Joe met at the line fence. Bill had a gun, Joe had a club; and when it was over Joe was dead and his wife was a widow and his children were orphans. Bill was sent to the penitentiary, and in effect his wife was a widow and his children were orphans; and the pity of it was the dispute over the line fence remained just exactly as it was before. The trouble and killing, the sorrow, the grief, the widowhood and orphanage had not determined where the line fence ought to be.

But Bill and Joe had a tribunal, a forum, into which they could have carried this dispute and determined where the line fence ought to be.

Now, to apply our parable: Bill owns a factory, or rather, because he is a capitalist, I suppose we ought to refer to him as "William," and Joe works for him—a good many Joes. Joe says to William, "I have got to have more wages." William says, "I am just making both ends meet; I can't pay you any more." Joe thinks William is lying. Possibly he is—William sometimes does lie. But Joe doesn't know. William doesn't know how Joe is living, or whether he is getting a living wage, and ordinarily he doesn't care, and between them there is a gulf of suspicion and distrust.

Now, we will assume that Joe strikes. Of course, nowadays there are not very many strikes on account of wages. Strikes are for many other things. The workingman strikes because he wants shorter hours; because he wants Saturday afternoon off to play golf. He strikes because a metal worker is compelled to carry a plank from one floor to another, thus interfering with the International Amalgamated Association of Carpenters. He strikes in Missouri because in Minnesota some scab is employed in the mine. He strikes because some distinguished prelate of the Catholic Church wasn't allowed to land in England. He strikes because somebody has gone on a hunger strike in England or Ireland. He strikes because his subboss or walking delegate wants to show his authority; or he wakes up in the morning and says, "It is a fine day; let's strike."

But we will assume that this is one of the old-fashioned strikes for a higher wage. So William shuts his factory, and after a while he puts on "scab" labor, and to protect this "scab" labor and these strike breakers he imports guards—professional gunmen—and throws a barb-wire fence around his factory. In a little while the little savings of the Joes run out, and poverty, hunger and cold invade their homes. Some of the more excitable Joes explode a stick or so of dynamite; shots are fired. Some of

the Joes are killed, their wives are widowed and their children become orphans. Some of the strike breakers are killed, their wives are widowed and their children orphaned. Extra police are put on the job; extra deputies are sworn in, and finally—generally too late—the military is called out, and you and I pay the cost. Innocent bystanders are killed or crippled; property, having nothing on earth to do with the controversy, is destroyed; the city is terrorized and the public peace is disturbed, and for a time, disorder and ruin. Finally, when both sides are exhausted, they have an arbitration. There is a kind of a truce fixed up. Joe is given an increase of wages, and William blithely charges the increase to production and passes it on to you and me, and Jones he pays the freight—he always does.

But it isn't peace; it is simply a temporary truce, and both sides at once prepare for another inevitable conflict. And after all the tears and sorrow, the strife, the chaos, the bloodshed and destruction, the poverty and misery, and after that gulf of suspicion has been widened and deepened, the truth of the controversy, the true location of the line fence, is just as undetermined as it was at the outset. The Gompers and Howats tell you that this is the only way that disputes between capital and labor can be adjusted. My friends, if that is true, then there is a radical defect in our civilization to-day. We have abolished the ordeal by battle, the duel; we have abolished private warfare everywhere else. Shall we continue to permit it in industrial affairs?

In the great debate between Governor Allen and Mr. Gompers, Governor Allen asked Mr. Gompers whether, in such a conflict as I have described, the general public had any right or interest in the controversy, or whether it was purely a private warfare between labor and capital. Mr. Gompers at the time did not answer the question, because he could not. To deny that the general public had any interest in these controversies—although they suffer in common with the disputants, and in the upshot pay most of the cost—would have brought down upon him the condemnation of the general public. On the other hand, to admit that the public has an interest in this controversy would have been to approve our Industrial Court, or some form of remedial legislation.

Now, mark you, so long as you give labor no forum wherein it may bring its troubles and be heard, you have no right to forbid the strike. If the original Bill and Joe had had no forum where they could take their dispute they would have been justified in taking to arms.

After this dispute, with its loss and suffering, if ended, this labor line-fence dispute remains the same as the other. Nobody knows, when it is through, whether Joe is getting wages enough, or whether he is doing an honest day's work, or whether he is a slacker. Nobody knows whether William was running his business in a good, honest American way, or whether he was a filthy profiteer.

You and I know that it is only by combination, and largely by strikes, that labor has fought its way out of the long night of servitude and degradation into recognition of its manhood, into the full light of day, and you cannot blame the laboring man for his superstitious belief that the strike is the only weapon he has, that only by the strike can he get his rights, and until you give him some tribunal where he can present his

wrongs and have redress you have no right to condemn this right to strike.

We in Kansas, where we are fond of trying experiments, have established what we call the "Industrial Court." Our legal purists say these controversies are not justiciable. I understand them to mean by this that they are not such controversies as are cognizable of right in courts of general jurisdiction, like the circuit court here or the district court of Kansas—what we call *"nisi prius"* courts. That is to say, the employee cannot go into court and sue for higher wages, and the employer cannot go into court and compel the employee to work for a lower wage.

In the colonial days the legislative assembly was often known as the "general court." I think it is true in some of the Southern states to-day, and I believe is still true in Massachusetts. It is not a court; it is an administrative body, exercising certain police powers; and before we examine this bill we had better stop for a moment and consider just what is this police power. You will pardon me if I talk hornbook law to you; but I find a great many well-informed lawyers are very hazy as to the nature and extent of the police power.

Edmond Burke, in one of his sublime orations, said that the whole state and power of England, its kings, its lords and commons, its army and its navy were constituted, ordained and maintained for the purpose of getting twelve honest men into the jury box; that is, the protection of the citizen's life, liberty and property by forms of law instead of by arbitrary power. But the institution and processes of the courts exhaust but a portion of the police power of the state. A vast reserve of the police power remains to be administered by the executive arm—what is commonly known as the administrative branch of the government. And let me say here that a dictum of an early English court, attempting to distinguish between the administration of justice as an independent attribute of the English constitution, and the police power, which was the king's prerogative, has misled many law writers into separating the administration of justice from the general police power.

Courts administer police power by certain long-recognized formulæ; but it is, nevertheless, the police power of the state that is thus exercised. But after the courts have functioned there remains a vast domain of police power, exercised by the administrative arm, which deals with the general welfare of the people—public health, the maintenance of public peace, public morals, and even the comfort and conveniences of the citizens. All of these are under the watchful exercise of the police power. There is this clear distinction between the exercise of the police power by a court and by the administrative arm. The court is inert until its jurisdiction is sought and invoked by appropriate formulæ. A court cannot go out and seize a criminal and try him until a complaint has been presented and a warrant issued. The court cannot collect your debt until a complaint has been filed against the debtor. A court cannot do equity until the equitable jurisdiction has been set in motion by an appropriate bill. But the administrative arm acts *ex proprio vigore*. It acts without complaint, without warning and without investigation. It may act upon suspicion or surmise. It has inquisitorial power; power to subpœna witnesses and compel

the production of books and papers without any complaint being filed—wherein it differs from a court.

You cannot swear a witness in court until there is a legal controversy before the court. The exercise of the police power by the administrative arm is swifter of execution, speedier in action, and presents many advantages over the rule-hampered action of the court. That is the reason why we decided to make the Industrial Court an administrative body rather than a judicial body. As a court it would have had advantages. It could punish for contempt; it could execute its own orders. You cannot confer administrative functions upon a court, but you can confer quasi-judicial powers upon an administrative body—the power to investigate, to take evidence, to deliberate, to weigh and to find the facts. These powers can be conferred upon a legislative tribunal, or upon its arm—a committee sitting for the purpose of investigation.

We have had a distinguished example of it recently in the committee of the Senate of the United States which has been investigating campaign expenditures—investigating them so thoroughly that many earnest workers in both parties have found themselves without a job as a result of this investigation. This investigation, with its illuminating evidence, would have been impossible in a court.

The administrative arm can anticipate labor troubles and strikes by investigating the conditions surrounding the mine or factory where disputes and industrial troubles are reaching an acute stage. Before a strike has been called, before there is an overt act of industrial warfare, it can publish its findings, so that the public will know whether the worker is getting a fair wage, working reasonable hours, giving an honest day's work for his wage, and so that the public can know whether the business of the employer can reasonably stand shorter hours or an advance in wages without increasing the price that he charges the consumer. In fact, if these inquisitorial powers of the court were all its powers—if these things were all that it could do—it would be worth the cost. We would know where the line fence belongs. Publicity, like the sunlight, is a great germicide. No sociological wrong can stand the light of day. The truth will kill it. If everyone knew the wholesale and the retail costs of the articles which they buy there would be no profiteering.

Whatever doubts there may be as to the constitutionality of some parts of the Industrial Court law, no one has ever questioned the right of the state, under its police power, to establish this administrative body and to give it these inquisitorial powers.

It is true, Mr. Howat, who is now in contempt for refusing to obey the process of the court and testify, has appealed to the supreme court of the United States, but that court, in the Interstate Commerce case, in 250 U. S., has decided every question raised by Mr. Howat's appeal against him.

Coming now to the question of police power; it is the broadest, the most unlimited, the most illimitable of all the powers of government. Outside of a limited number of cases where the police power affects the rights of property, the right to bear arms, public assemblage and the freedom of religion, where the police powers are limited by certain amendments to

the conditions, the only boundaries, the only circumscription of that police power are that the exercise of it must be reasonable, and that it must tend to public welfare. No respectable court and no text-writer has ever attempted to go further than this in setting boundaries to the power, and each case is decided upon the particular and instant question of fact.

It may be said that the police power is the end and aim and final object of all civil government, because the end and object of all civil government is to promote the general welfare and happiness of the citizen, and it is with that that the police power more closely deals.

The police power greets you at the threshold of life, where it prescribes the qualifications of the doctor and the nurse who bring you into the world. It follows you to the tomb, where it regulates the cemetery where your ashes are finally inurned. And during all that interval, from the first puny wail of the new-born child to the death rattle of the dying, it surrounds you every moment with its invisible, ever-present protection. Waking or sleeping, alone or in company, in the crowded street or on the lonely prairie, the police power is there, not merely protecting your life, your liberty and your property, but protecting your health, the morals of your community and safeguarding the comfort and convenience of your daily life.

The police power is the only power that can take and destroy private property for the public benefit without compensation to the owner, as where it destroys an unsafe or unsanitary building. It is the only power that can destroy the sanctity of a contract, which the constitution says shall be held sacred. It is the only power that can override a treaty, which the constitution says shall be the supreme law of the land, as was held in the New Orleans quarantine cases, where a health regulation of the city of New Orleans set aside a treaty stipulation between America and France. It is the most comprehensive and most minute of all the powers of government. It protects the cattle of the Kansas farmer against Texas fever, and it protects the migratory birds against undue and continuous slaughter. It regulates the length of time that the mill whistle may blow without undue disturbance to the peace and quiet of the neighborhood, and it stops the great liner, with its thousands of passengers, at the threshold of the country until every individual has proven his right to be admitted upon the ground of his physical and moral healthfulness.

It is the most flexible of the governmental powers, adjusting itself almost instantly to every change of conditions. The police power, which adequately regulated the movements of the stagecoach, was found sufficient, without any extension of power, by merely adapting established principles to new conditions, to regulate the railroads, the steamboats and the automobile, and shortly it will reach its long arm into the sky and regulate the air lanes of the aviator. Every time a new and dangerous mechanism is invented, whether for labor or pleasure, the police power seizes its control and regulates it for the safety of the public.

Its two greatest functions are the protection of the public health and the public peace, and these are the foundations upon which, mainly, the power of the Industrial Court rests. In the first place, the legislature defines the necessaries of life as food, fuel and clothing. This is not a legislative fiat;

it simply recognizes the primal necessities of life in the temperate zone. A man may live, love and be happy in a tent, a cave, or a dugout; but to be well, to be healthy, he must have food, fuel and clothes. The state is not concerned with whether a man has one suit of clothes or a dozen; one meal a day or five. It is not concerned with whether he has fuel enough to warm a ten-room house or one room. But it is concerned, and the public health demands, that every family shall have so much food, so much fuel and so much clothing as shall maintain their health, keep them in decent comfort, and provide for the sturdy upbringing of the future of the race.

Whenever a strike, a shutdown or a lockout threatens such a shortage in these necessities as endangers the public health, then the state has the same interest in the strike or the lockout that it has in an approaching epidemic of contagious disease. The state need not wait until smallpox or yellow fever have invaded a community. It may quarantine against these evils far in advance, prohibit persons coming from an infected community from entering the district where the public are yet whole. It may shut up an infected family within its dwelling, indefinitely, to protect the whole from the infection. This prohibition against any interference with the continued adequate production and distribution of the necessaries of life applies equally to the employer as well as the employee.

The other day the American Woolen Mills Company, which in three years had raised the price of woolen goods nearly 300 per cent, and had made in one year 119 per cent on its capital, abruptly shut down, throwing 40,000 working people out of employment, clearly in order to keep up the exorbitant price of woolen goods. If that had happened in Kansas the inquisitorial power of this court would have been instantly invoked, the officers of the company would have been placed under oath, and the books of the company examined by experts to determine the true reason for the shutdown. If the closing of this factory had endangered the adequate supply of clothing in Kansas, the state would have immediately taken possession of this factory and continued its operation, making due provision for a fair compensation to the owners of the property.

The power thus asserted in the law is seriously questioned. It may be unconstitutional, but you will find in examining this law that every power of doubtful constitutionality is segregated, placed in a section by itself, so that if any power asserted by the court is denied by the supreme court of the United States, the other powers remain. The constitutionality of the court and its inquisitorial power are unassailable. Of course, under this branch of the court's power, only such industries are affected as produce and distribute these necessaries of life. A strike in a match factory or a chewing-gum factory would not come within the purview of the court under this head.

But there is another police power equally as important, and that is the protection of the public peace. If a strike of any considerable size endangers the public peace, the police reserves are put on duty; the sheriff swears in a swarm of deputies; frequently the militia is called out. Nearly always there is bloodshed, loss of life, destruction of property; in fact, these things are almost inevitable. They have come to be regarded as an integral part of the strike, inevitable factors of this private warfare, just

as the killing and maiming of man is inevitable in public warfare. The state has a right to anticipate violence and prevent it, as well as punish it after the act. If I threaten our chairman with violence he can have me bound over to keep the peace. In fact, there is now in the courts power of prevention of such breaches of the peace by injunction. It is a power that has always been questioned, often denied, but generally upheld; but usually the power of the court cannot be invoked until the danger line is reached—until, in effect, there has been an overt act of violence, interfering with the lawful possession and operation of the employer's property. So this law says that whenever there is a strike, or the danger of a strike, that threatens the public peace of a community, this court shall at once begin to function. It shall examine the merits of the controversy. It shall find, determine and publish who is right and who is wrong; it will ascertain and announce whether the workmen's hours shall be shorter, whether his wage shall be higher; whether the employer of the workingman is entitled to a higher price for his product in order to pay such higher wages.

The American people are generous. They wish the workman to have a living wage, a decent standard of comfort for himself and family. They are willing that the employer should earn a fair return upon the capital invested. If the conditions of the employment demand an increase of the cost of the labor, whether by higher wages or shorter hours, and the profits of the employer will not warrant such increase, they are perfectly willing to pay a higher price for the product. The trouble with all existing labor disputes is that no one knows these facts. The laborer does not know whether the employer is profiteering. The employer does not know, generally speaking, whether the laborer is getting a decent wage. He buys his labor as cheaply as he can get it, as he buys everything else, and the general public know nothing at all about it except that they suffer from the strikes and they suffer from undue increases in the cost of living—part of which is due to exorbitant profits of the employer, part of which is due to the refusal of many laborers to give an honest day's work for a fair day's pay.

When the supreme court of the United States upheld the Adamson law it took judicial knowledge of the fact that a strike, a general strike, of all the railroads in the United States would endanger the public peace; that such a strike would curtail, if not absolutely stop, distribution; would endanger the public health; and it upheld the police power of Congress over interstate commerce in asserting, by the Adamson act, that eight hours should constitute a day's work. One of the justices, in dissenting, called attention to the fact that if Congress might, in favor of the laboring man, say that eight hours was a day's work, it may at some future time declare, as against the laboring man, that eight hours shall constitute a day's work, and that he may not demand a day's pay until he has worked eight hours, whatever his contract with his employer may be. This is an approval from the highest court in the land of the most radical step that has ever been taken by Congress in industrial matters, and it was taken and approved under the same police power which we invoked by the Industrial Court law. It is difficult to see how, in the face of the decision on the

Adamson law, any provision of the Industrial Court law can be held unconstitutional.

The failure of this law is predicted by superficial observers, because they say arbitration has been tried in industrial suits and has utterly failed, notably in Australia, New Zealand and Canada. Arbitration is nearly a failure. The vice of it is that upon every arbitration board the two contending parties are represented by their own advocates, each determined to maintain the side of those who selected them, and then some neutral-minded person, generally without knowledge of the controversy or its elements, is selected for the third party. Most frequently the representatives of the employer and the employee get together on an increase of wages, overrule the representative of the general public, and the increase in wages is charged to the consumer. If you were engaged in litigation would you be willing to submit it to a court picked up, temporary in its nature, composed, on the one side, of your lawyer, and on the other side, of your opponent's lawyer, and some stranger to the controversy whom those two might select? Or would you prefer a permanent court, learned in the law, experienced in the decisions of similar controversies, having no connection with or interest in either side of the controversy? In other words, would you swap your courts for arbitral bodies? No one would even suggest it. Nearly all the states have laws providing for arbitration, and such arbitrations are nearly always failures, for the reasons just suggested.

Kansas is the first state that has established a permanent body, functioning all the time, with judges of sufficient eminence and dignity as will inspire the confidence of litigants and of the general public, and representing every class within the state, exactly as the supreme court does. We have done away with the idea that labor and capital ought to be represented upon the court or body which decides their controversy. We say that these labor controversies are not unique. They are no more sacred than any other controversy between man and man. They are to be decided upon the same principles and the same conclusions of right and wrong that should decide every other dispute and controversy, and we have established the same kind of a tribunal for that purpose; and so, having given both labor and capital a tribunal where their differences may be settled by forms of law, we have abolished, or attempted to abolish, the strike. That is to say, we declare it unlawful for the heads of any body of organized labor to declare a strike which shall endanger the public peace or the public health, and every strike does one or the other. We have declared that it shall be unlawful for laboring men to conspire together to call a strike. We have declared that it shall be unlawful for employers to shut down their mines or factories for the purpose of creating a shortage in the essentials of life, and we have placed penalties on any violation of this act. But we do not undertake to outlaw and penalize strikes or conspiracies to strike until we have first given the contending parties the forum in which to hear their grievances in a legal way.

In these particulars Kansas is ahead of all the rest of the world. In these particulars we point with pride. In these particulars we think we have taken the first sane, logical and well-considered step towards the

adjustment of labor troubles. We have substituted the reign of law for private warfare. We have placed these controversies on a parity with all other controversies between man and man. We have eliminated the stain of medieval savagery from the conflict between labor and capital. Very gradually labor is beginning to understand that this court is its friend and not its enemy. Some twelve or fourteen disputes over wages or other conditions have been adjudicated by this board, and both parties have accepted the finding of the court, and strikes have been avoided. More and more the laborers are seeking the jurisdiction of the court, sometimes even through their accredited organizations, like the Switchmen's Union. It will take time to eliminate from the laborer's mind the superstitious regard for the strike. The law has been consciously and persistently misrepresented in order to create a prejudice against it. There is not a line or a principle in it that compels any man to work for any given wage or any given number of hours. His right to quit work at any moment he pleases is recognized. His right to collective bargaining—that is, to make wage agreements through the organization of labor—it expressly recognizes. But the closed shop is not recognized, and never will be, because the closed shop is un-American. It denies to a man the right to work when and where and for what wage he pleases. If some men in Kansas City were to announce that no man could work for the street railway or the packing houses until he had first obtained from this self-constituted boss a card, for which he must pay; that only upon the presentation of this card could he obtain employment; that as a requisite to the continued enjoyment of the card and its permission of employment he must pay a part of his daily wages to the boss; that he must agree to quit work whenever the boss tells him to, and go to work whenever the boss tells him to, without knowing why; and that every man who undertook to work with these employers without such a card should be denounced as a "scab," refused lodging or food, ostracized in his community, liable to be stoned or clubbed to death whenever he emerged from or entered the factory—how long would the general public endure such a tyranny? And yet, in effect, that is what the closed shop means.

So we in Kansas, while recognizing collective bargaining, while heartily approving, generally, the organization of labor, with all its mutual benefits and advantages, condemn the closed shop, condemn the strike, and have outlawed private warfare. My friends, the question with which the Industrial Court deals is the most intimate, the most momentous that confronts the American people. Compared to it the League of Nations is academic. We can go into the League of Nations with Cox, or we can stay out of it with Johnson, or we can go into it with reservations with Harding. The choice is ours. But we have no choice in, nor escape from, these labor troubles. And dependent upon these labor troubles is the high cost of living, the menace of bolshevism, the threat of the soviet, the propaganda of the red, and all the terrible, constantly accelerating unrest from below. Unless we settle these labor troubles this government will disappear. The heritage that our fathers have handed down to us, as yet unimpaired, will vanish; and upon us, as lawyers, the conservators of the constitution, the

constructive force in all lawmaking, more than upon any one class, depends the final solution of this vast and menacing trouble.

I commend to your careful consideration and study the Industrial Court law. It is not perfect; it will need amendments. Some of its powers may be lopped off, but its principle is sound. Unquestionably it has in it much that is good. I sincerely believe that it will be the model upon which all remedial legislation for these labor troubles will be finally based.

Judge Dillard's Plea.

[Judge Dillard, of Fort Scott, Kan., is a leading Democrat, a former state senator, a lawyer and jurist.]

OF OUR many problems one of the most important, to my mind, is a fair and just settlement of the ever recurring disputes between labor and capital—an equitable adjustment of the rights of employee and employer. The party or the man who can and will correctly solve and rightly end this question will earn and have the gratitude of all men. Heretofore the employer and the employee have fought over their differences, with no more regard for the rights and interests of the general public than two men who contest with one another the ownership of a mule; and yet in all such conflicts the people have had as vital, and perhaps more vital, concern than the combatants themselves.

No just man can deny that capital invested in an industry should have fair protection and security and is entitled to a reasonable return thereon; no just man can deny that labor should have adequate and commensurate compensation for its work and production, and no just man can deny that the public has a supreme interest in seeing that capital has such protection and security and labor such compensation and reward. And even above and beyond this, when the conflict between the two particularly affects the people as a whole; when it decreases the production of things necessary to life and comfort; when it increases the cost of such things; when it entails want and suffering; when it interferes with commerce and transportation; and when it threatens to stop the very operations of government itself, it ceases to be a mere private quarrel—it becomes one of public obligation, and the government without the desire and power to settle it fairly and honestly is no government at all and ought to be abolished.

If the time shall ever come when a minority of the citizens of this country, of any condition or class, to enforce either their rightful or wrongful demands, has the power to interrupt the very functions of government, then we will have an anarchy, not a democracy, and our boasted representative system will be dead—dead as Cæsar—dead as it ought to be. And if in a republic such as we have, where majorities are supposed to rule through their chosen representatives in their legislative assemblies—for I speak not of despotisms, where the sacred right of revolution has always existed and will always exist—any man or class of men say to the constituted authorities, "I defy you and your laws; I will not submit myself or my controversies to your tribunals," the firm and final answer of such authorities should be, and be only, "Either I will abolish you or you will abolish me."

To every controversy between capital and labor there are, or there ought to be, three parties, and I name them in the order of their importance: (1) the people, (2) the employee, and (3) the employer.

In the past the employer has claimed the right to name the wages he should pay for labor, the hours of labor, the conditions under which the

labor should be done, the price he should receive for the product of his money and such labor, and in fact, as he expresses it, run his business to suit himself; in other words, his position has been, the laborer and the people be damned.

On the other hand, the employee has claimed the right to name the wages of his labor, the hours of labor, its conditions; and his position has been, in effect, the boss and the people be damned.

The result has been that capital has been wasted and rendered insecure and unremunerative, labor has lost millions in wages and time, and the public has bled at every pore.

The history of strikes discloses that nothing was gained either in money or other things by either employee or employer, while the loss in money and production staggers belief; and worst of all, there was left a feeling of antagonism between hirer and hired which will take a decade of beneficent legislation to eradicate. It is absolutely lamentable to go into almost any great industrial plant and observe the want of kindness on the one part and of loyalty on the other between owner and operative. The young man no longer appears to know that the one and sure road to success and promotion is by capable and honest attention to his work, or to know that the more he makes for his employer the more that employer will be willing and able to pay him; and the employer seems no longer to look for or expect efficiency, since he knows he must pay inefficiency the same wages he pays efficiency.

But to the seeing there are signs of a coming change. The people are beginning to realize that they too are parties to this almost endless dispute; that they have interests to be protected. They are getting tired of being damned either by capital or labor, and they are commencing to ask if there be not some more equitable and sensible way to settle the quarrel than has been the fashion in the past. It took a crisis in Kansas to bring the matter to a focus. The coal miners in southeastern Kansas concluded to go on a strike. That their grievances were well founded is alleged by them and denied by the owners of the mines. I do not know what is the fact. The miners chose the best time of the year for their purpose—the winter coming on, when coal would be needed not only for the comfort but the very existence of the people. To one not interested it would seem that both parties should have been willing to proceed with production and to submit the difficulty to some tribunal for decision. One would think self-interest demanded such a course. Assuming the owners were making profit from the operation of their properties, a cessation of operation meant a loss of these profits. Assuming the miners needed employment, a cessation of operation meant a loss of this employment. It is stated that both parties refused any offer of arbitration or to submit to the determination of any body whatever. Each thought the other could be forced into submission to its demands. Neither thought of any interest of the public in the production of the necessity of life handled by them. Neither cared, or seemed to care, for the suffering which would follow the lack of coal consequent upon a shutting down of the mines.

The state, to minimize as far as possible that suffering, asked the supreme court to name receivers for all the mining properties and to order

the receivers to operate the mines. The court did so, and thereby incurred the ill will of both owners and miners. The miners refused to work for the receivers. A few hundred gallant young men and nonminers volunteered to dig in mud and snow to produce what coal they could. No great quantity of fuel was produced, it is true, but the effort demonstrated that the people of Kansas know when and how to resent wrong and injustice and can be depended upon in times of emergency and danger.

This incident resulted in a special session of the legislature of the state and the Industrial Court law. It is an honor to our lawmakers that this act was passed by almost a unanimous vote of all the members.

The enactment should be carefully read to be understood and appreciated. No statute has ever been as grossly misrepresented and misstated.

It does not take nor attempt to take away from any man the right to quit the employment of another at any time and for any cause. It expressly recognizes the right of collective bargaining and encourages agreements between employer and employee. It deals with the following businesses and declares them to be affected with a public interest: (1) the manufacture of food products; (2) the manufacture of wearing apparel; (3) the production of fuel; and (4) the transportation of such products, apparel, and fuel. It also deals with all matters heretofore under the control and jurisdiction of the Public Utilities Commission of the state. It puts all these matters upon a plane of public concern and interest and erects a tribunal to decide questions relating thereto. It attempts to preserve continuity in the making, production and carrying of these articles so essential to the welfare and existence of the people of the state. It declares that every worker is entitled at all times to receive fair wages for his toil and that invested capital is entitled at all times to receive a fair rate of return therefrom. It further expressly enacts that every laborer shall have at all times healthful and moral surroundings while he is engaged in his work. It in terms recognizes the God-given right of every man to make choice of employment and to make contracts in relation thereto. It provides for the settlement of all disputes and controversies between persons, whether owners or employees, engaged in the named businesses, and furnishes lawyers to present, stenographers to report, and judges to try all such disputes and controversies. This court may act on its own motion or on the motion of any one wishing its action. Its services, like salvation, is free and full.

But this law, like everything else of any vitalizing force, has some teeth. A law without its vindicatory part is a dead letter—senseless and useless as a law against murder unless murder is to be punished.

Therefore, this statute provides that if any persons, whether owners or laborers, engaged in these necessary industries, shall combine or conspire to willfully hinder, delay, limit or suspend the continuous and efficient operation of such industries for the purpose of evading the intent of the act, they shall be punished as provided. It is also made unlawful to conspire and confederate together to injure any person in his business or labor by boycott, by discrimination, by picketing, or by any other means; and further, it is unlawful to discharge any employee for testifying before the court or for making complaint to the court, or for bringing any matter to

the attention of the court; and all combinations and agreements to affect the prices of the commodities mentioned are strictly prohibited.

This statute is the first effort by any American state, so far as I know, towards a fair, just and decent solution of this miserable and destructive strife between capital and labor; and while it may have defects, as all new legislation has, as a rule, it assuredly is a forward step in the right direction and its faults can be, as time develops them, remedied by amendment. It takes from neither employer nor employee any just right, but protects them both, while securing the first party—the public.

I am therefore opposed to the sending to the Kansas legislature of any man who does not believe in the principle of this law or who will go there with any purpose of voting for its repeal.

I am satisfied, further, that the next national Congress will enact a similar law for the regulation and control of such industries as fall within the domain of congressional action, and that in time, and in a short time, the principles of the Kansas Industrial Court law will be put into force in all the states of the Union. Discoveries in the science of legislation come slowly; but when they do come they are recognized and seized as quickly as discoveries in the other sciences and departments of human knowledge.

When the toiler knows he is receiving the just and adequate reward of his effort, when the owner knows his money invested in industry is safe and secure, and when the innocent bystanding public knows it is not the chief sufferer from the costly and undetermined conflict between the two, confidence among all will be restored, individual initiative and ambition will be revived, competency and efficiency will be recognized once more, and all men will bless the law which now only the foolish condemn.

Resume of the Court's Activites.

ONLY twenty-seven cases have actually been filed on the industrial side of the Kansas Court of Industrial Relations. These cases were all filed by labor except one, which was an original investigation by the court. Nineteen of the twenty-seven cases have been heard by the court in a formal way, and decisions have been rendered. In thirteen of the nineteen cases a wage increase was granted. In two cases working conditions only were involved. In three cases the wage increase applied for was refused by the court on the ground that the wage already being paid was a fair wage under the Kansas statute. One of the cases involved continuity of production of flour. There has been but one appeal from any decision of the Kansas court, and that was the appeal by the railroads in what we call the "Firemen and Oilers Case." This case has since been settled by agreement. Labor has not appealed from any decision. In fairness, however, it must be stated that only low-paid labor has applied to the court. Laborers receiving the higher wages have, of course, been satisfied, or at least they have not felt it necessary to apply to the Court of Industrial Relations. The increases allowed have been very moderate. The law permits the establishment of only a minimum wage scale. It is a curious fact that in some instances, and with reference to certain classes of employees, the employers have voluntarily increased the wage above the minimum fixed by the court. This, as a rule, has been done upon the theory that the men affected were of a skilled or semiskilled class of laborers who were entitled to more than a minimum wage. When the unskilled laborer was given an advance on the theory that the wage was unfair, in the Kansas sense, the skilled laborer was increased to what the employer found to be the same scale.

A typical case in the Industrial Court is the case of the Joplin & Pittsburg Interurban Railway Company, in which the employees of that company asked for an increase in wages. The evidence in that case showed that at a former time a strike had occurred, lasting eighty days, which deprived the community of the service for all that time, and cost the utility nearly $70,000 in earnings and the workers between $30,000 and $40,000 in wages. That was before the enactment of the Kansas industrial law. With the new law in force the workers, instead of striking, came to the court for an adjustment of the wage dispute. The service was never interrupted, the company's income was not disturbed, and the men drew their wages. The court decided the matter, an increase in wages was allowed, and the decision was accepted by both parties, and a great economic waste was averted.

The number of cases filed and decided is a very poor indication of the activities of the Industrial Court. The work of the court has been along various lines and in various fields. For instance, in the coal investigation,

involving working conditions for from 8,000 to 10,000 miners, three bench orders were issued by the court affecting working conditions, two of these admittedly favorable to the miners; the other, modifying what is known as the "check-off" system, was not satisfactory to either the miners or mine operators, but was believed by the court to be fair to the public. The "check-off" system, by the way, is the name given to the rule by which the employers check off from the miners' pay the monthly dues, the special assessments and the fines imposed by the local miners' unions.

Aside from the coal investigation, there have been various investigations, too numerous to mention here, which never came to any issue. They include matters affecting working conditions, hours of labor, safety appliances, sanitary conveniences, and a variety of other matters. All these are matters which come under the industrial law and not under the public-utilities law. The court has two employees who act as inspectors, and when a complaint is made go immediately to the plant or industry affected and endeavor in a quiet way to ascertain the facts, and, if possible, to alleviate the situation. They have been very successful, and the service they have rendered has been very valuable.

One other very important matter which has been given attention by the court is the investigation into the cost of producing and distributing coal from the mines of Kansas and within the state of Kansas. In this investigation the attorney-general's office participated with the court. A very exhaustive research has been made and the report of the court is now in the hands of the state printer. When this is distributed the people of this state will be able intelligently to purchase their coal, and if any profiteering is shown, will enable the attorney-general's office to enforce better the laws with reference to conspiracy in restraint of trade. The public will never fully realize the amount of work that has been required in this investigation. It is a work which ought to be valuable for years to come.

The court has conducted what might be called a "bureau of information." Hundreds of letters and other communications from residents of Kansas have been answered and information given from time to time with regard to the rights of labor, the rights of capital, and the rights of the public under the Kansas law. These have all been given courteous attention, as this was a proper activity of the court. It has cost the state nothing except postage, and if other states adopt this law or similar laws, it would be much more easily enforced in this state.

The court has been in existence only since February 2, 1920. It had no chart or compass. It had no precedent to guide it. Every question that was brought before the court was a brand-new question, right out of the shop. It was operating under a law which had never been tested by the courts. The general public will never appreciate the work which was placed upon the judges of this court in shaping its course during these early months in determining the principles of law upon which these cases must depend and in general laying the foundations of a new phase of our system of jurisprudence. Very few know in full measure the value of the Kansas law as a preventive of industrial disturbances.

It will be remembered that Mr. Howat, president of District No. 14 of the United Mine Workers of America, last April was giving out defiant

interviews that he would call a strike whenever he got ready and would show Governor Allen that he could not enforce his law. Since that time, through the activities of the Industrial Court and the attorney-general's office, and purely by reason of the terms of the industrial law, Mr. Howat has served about ten days in jail; he has had the law tested in the supreme court of the state in his case and the decision has been adverse to him, and he is now under $20,000 bond appealing to the supreme court of the United States. By the same means and the same instrumentalities, an injunction has been obtained in the district court of Crawford county against Mr. Howat and some 170 of the officers of the local unions of the miners in that district, enjoining them from calling a strike, with the admonition upon the part of the district judge that if production ceased in that district a mandatory injunction might be necessary. Under all these circumstances Mr. Howat has changed his defiant attitude, and has even given out a statement to the public that he would not call a strike.

The Industrial Court is also the Public Utilities Commission. After several wage decisions and cases brought on the industrial side, it was discovered that a shorter way and a cheaper way to arrive at the matter of increased wages was to try the wage question out at the same time as the rate-increase application by the utilities, and that was especially true in telephone matters. The fact is, however, that the spirit of this industrial law was being worked out long before the law was enacted. In July, 1919, the old Public Utilities Commission rendered a decision affecting the railroad freight stations in Topeka, Kan., which for the first time recognized the social rights of the workers. In the summer of 1919 also, at the time of the Postmaster General's increase in rates, when the Public Utilities Commission had brought an injunction suit against the Bell Telephone Company to enjoin it from putting in the rates, sixty supervising employees of the Bell Telephone Company appeared before the Public Utilities Commission and demanded a hearing upon the wage issue. The testimony introduced was a revelation to all three of the commissioners, and showed absolutely and unquestionably that the wages paid to telephone operators in the state of Kansas were so low that only the oldest and most skilled of the operators got a wage sufficient upon which to live decently. At that time the Public Utilities Commission announced that if the Bell Telephone Company would guarantee that the Burleson increase would be devoted to the payment of a decent wage, the commission would not interfere with the rate.

There have been eighty telephone cases heard and determined by the Industrial Court since its organization. In the larger number of these cases an advanced wage to the employees was the main reason for the increase in rates if any was granted. In seventy-eight of the eighty cases the court rendered a unanimous decision; in two cases one of the judges dissented; but in each of the cases in which a rate advance was allowed the main reason for the increase was an increase in wages. It will, therefore, be seen that the industrial law is operating, even though it operates through the instrumentalities of the Public Utilities Commission.

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